

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A REGULAR MEETING HELD ON
MAY 9, 2006

LOCATION: MACOMB TOWNSHIP MEETING CHAMBERS
54111 BROUGHTON ROAD, MACOMB, MI 48042

PRESENT: CHAIRMAN, BRIAN FLORENCE
MEMBERS: EDWARD GALLAGHER
NUNZIO PROVENZANO
VICTORIA SELVA
DAWN SLOSSON

ABSENT: NONE

ALSO PRESENT: COLLEEN OCONNOR, TOWNSHIP ATTORNEY
JERRY SCHMEISER, PLANNING CONSULTANT
(Additional attendance record on file with Clerk)

Call Meeting to Order.

Chairman FLORENCE called the meeting to order at 7:01 P.M.

1. Roll Call.

Secretary SLOSSON called the Roll Call. All members present.

2. PLEDGE OF ALLEGIANCE.

3. Approval of Agenda Items. *(with any corrections)*
Note: All fees have been received and all property owners were notified by mail

MOTION by GALLAGHER seconded by SLOSSON to approve the agenda as presented.

MOTION carried.

4. Approval of the previous meeting minutes:

MOTION by GALLAGHER seconded by SLOSSON to approve the meeting minutes of November 29, 2005 as presented.

MOTION carried.

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PURPOSE OF HEARING:

To consider the requests for variance(s) of Zoning Ordinance No. 10 for the following:

Agenda Number/Petitioner/ Permanent Parcel No.	Zoning Ordinance Section No.
(5) Elro Corporation Permanent Parcel No. 08-13-200-023	Section 10.0704(A)(4)
(6) Metro PCS Permanent Parcel No. 08-31-332-002	
(7) Julio Ruvolo, II Permanent Parcel No. 08-21-376-016	Section 10.0704(A)(2)(d) 10.0704(A)(2)(a)
(8) Walter D'Aloisio Permanent Parcel No. 08-17-344-024	Section 10.0347
(9) Walter D'Aloisio Permanent Parcel No. 08-17-344-025	Section 10.0347
(10) Talon Development Group Permanent Parcel No. 08-35-476-042	Section 10.1603(B)(33)
(11) Detroit Edison Permanent Parcel No. 08-32-300-018	Section 14-26(B)
(12) Frank Jonna Permanent Parcel No. 08-34-300-027 08-34-300-028	Section 10.0323(A)(10)(X) 10.1603(B)(29) 10.1706(A)

5. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section 10.0704(A)(4)-Request to create a parcel without 300' of continuous road frontage.
Located on South side of 24 Mile Road, 1/2 mile East of North Avenue;
Section 13; Elro Corporation, Petitioner. Permanent Parcel No. 08-13-200-023.

Chairman FLORENCE read the findings and recommendations of May 4, 2006. They are as follows:

On March 14, 2006, the Zoning Board of Appeals tabled this item at the request of the petitioner.

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The petitioner is requesting a road frontage variance from 300' to 124' to allow the development of a subdivision. The parcel in question is provided with two means of access to 24 Mile Road – one of 124' and the other 34'. Only the frontage of 124' is sufficient to provide a single street to the balance of the proposed development. The remaining parcels of land, after the preparation of a subdivision plan, will not meet the parcel standards of the zoning ordinance.

In this case an overall plan must be prepared indicating how the property will be developed and what the final use the odd shaped parcels.

RECOMMENDATION:

Although the Consultant has no objection to the development of the property for single family residential purposes, objections are present that make the proposed development difficult. For example, the use of the “legs” of the parcel extending from the bulk of the site to 24 Mile Road presents a problem. The easterly “leg” is approximately 34' wide (390' long) and the westerly “leg” is approximately 65' wide (377' long). Neither of these parcels would meet the standards of the zoning ordinance for single family development (width or 3 to 1 ratio).

If however, the petitioner can show how these “legs” can be incorporated into the development, say as open space, landscape areas, or parks then the Consultant would be in a position to recommend approval. Any recommendations to approve should be conditioned on such agreements being recorded to insure incorporation of these “legs” into the development.

Chairman FLORENCE stated a letter requesting to be withdrawn was received by the petitioner dated May 2, 2006 as follows:

“At this time, the Elro Corporation wishes to withdraw the above-referenced variance request application. The matter was rescheduled for May 9, 2006.

We respectfully request a refund of any monies we are entitled to as a result of the withdrawal of our application.

Thank you for your ongoing courtesy and cooperation extended to me and our office”

MOTION by GALLAGHER seconded by SLOSSON to receive and file the letter of withdrawal from May 2, 2006.

MOTION carried.

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6. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Permission to vary the decision of the Planning Commission to deny the approval of the installation of cell tower equipment outside the building. Located on North side of Hall Road, west of Tilch Road; Section 31; Metro PCS Michigan, Petitioner. Permanent Parcel No. 08-31-331-002.

Chairman FLORENCE read the findings and recommendations of May 4, 2006. They are as follows:

On March 14, 2006, the Zoning Board of Appeals tabled this item at the request of the petitioner.

On February 7, 2006, the Planning Commission denied the proposed use of the property for the installation of equipment outside of the building. In 1993, the Planning commission approved the use of the property for a cell tower with the understanding that all of the equipment will be housed inside the building. The petitioner contends that there is no space inside the building for their equipment. A field check of the commercial building indicates that such space is vacant within 100' of the cell tower.

RECOMMENDATION:

It is recommended that the variance request be denied since the property owner had agreed in 1993 that all equipment would be housed inside the building.

Bob Przybylo, representative, was in attendance and stated the item had been tabled to try to resolve the issue of a Special Land Use being granted in 1993. He indicated the files on record at the township had been gone through and that no such documents exists. In addition, the co-locators that are on the tower in question have not received a Special Land Use.

He proceed to inform the members that they are trying to provide a service to the Township residents, and are trying to accomplish this by co-locating on existing towers rather than building/erecting additional towers. Lastly, there is nothing that exists that requires our equipment to be placed inside a shelter. The denial that was given by the Planning Commission was based upon a Special Land Use that was supposedly granted. Should the Board had the correct information they would have approved the request being made.

Jerome R. Schmeiser, Planning Consultant, stated the Planning Commission never granted a Special Land Use, but that when the original developer received site plan approval of the tower, he had agreed to house all equipment within a shelter in 1993.

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Bob Przybylo stated that no such document exists and would defer to the Township Attorney for this document.

Member SELVA asked Member GALLAGHER, who is also the chairman for the Planning Commission for his recollection.

Member GALLAGHER stated that he had contacted Larry Dloski, Township Attorney, who had indicated there had been a Special Land Use granted for this site. He may have been wrong. Regardless, an agreement had been made by the original developer that no equipment would be stored outside.

Jerome R. Schmeiser, Planning Consultant, stated the approved Site Plan is the document that shows that no outside storage will occur.

Bob Przybylo stated the site plan was approved and that a shelter would be built to house the equipment. Unfortunately, you can't surmise that any future co-locators would be housed in the shelter as well. In addition to having a site plan approval, a letter is always accompanied with the drawing which highlights any special conditions placed upon the site plan approval. There were no such conditions noted in the approval letter.

Jerome R. Schmeiser, Planning Consultant, stated that an approved site plan is a binding document. A picture is worth more than words.

Bob Przybylo stated they are not trying to force this proposal upon the Township or the residents, but that we are trying to make the most of the site.

Public Portion:

Helga Wickizer, 45206 Fryer, stated that she opposes the request since there is already a generator that sits in the open and when her windows are open you can hear the noise. If there were to be additional equipment placed outside of the shelter the proposed equipment would also have motors which would create additional noise.

Pete Titran, 45204 Fryer, stated that from their back porch they can see the tower. Furthermore, when we bought our condo we had inquired about the tower and had been informed that there would be no change. Also, when businesses move in west of Tilch Road we will extend the wall, which has not truly happened because there is a gap in the wall that has been plugged by a member of the condominiums to keep people from coming through. Lastly, he indicated that there are approximately 40 families who live in the complex that are opposed to the request being made. To add more equipment to an existing tower is worse

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than erecting a new tower.

MOTION by SLOSSON seconded by GALLAGHER to close the public hearing.

MOTION carried.

MOTION by GALLAGHER seconded by SELVA to deny the appeal of the decision of the Planning Commission to deny the approval of the installation of cell tower equipment outside the building. The Planning Commission acted in good faith on the documentation they had. There was a site plan approved with the stipulation that no equipment will be stored outside a building and that action should be followed.

MOTION carried.

7. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section 10.0704(A)(2)(d)–Request to exceed the 3 to 1 ratio by 41.76'.
Section 10.0704(A)(2)(a)–Request to develop a lot without sufficient area.
Located on the west side of Marseilles Street, approximately 700' north of 22 Mile Road.; The South 1/2 of Lot 16 of Volkaert Subdivision; Julio Ruvolo II, Petitioner. Permanent Parcel No. 08-21-376-016.

Chairman FLORENCE read the findings and recommendations of May 4, 2006. They are as follows:

The petitioner is requesting permission to construct a residence on a parcel of land that does not meet the standards of the Township. Recently the petitioner requested a parcel split to create the property in question. The split request was denied since the newly created parcel would not meet the standards of the County Health Department with respect to size for the installation of proper septic fields. It is anticipated that sewer facilities will be installed on Marseilles Street, but the timing has not yet been decided.

RECOMMENDATION:

It is recommended that the variance be held in abeyance until such time as the sanitary sewer facilities have been installed.

The petitioner submitted a letter dated March 7, 2006, in support of the request, was included into the record.

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“It is our desire to have the property known as, Parcel #08-21-376-016, split due to the following reasons.

“We have a growing family and would like to build our new home in Macomb Township. We have many family members that live in the area. We are very involved in many activities with our extended family and church. The property listed is centrally located for these activities.

“The most important reason for the split is that our parents are aging. We were planning on building homes next door to each other. This would help us to care for them in their senior years. We have searched for property in other area and this is the most desirable one.

“We purchased this property with the intent to split it for the reasons above. Before we purchased the property we did much research on it. According to our findings and County records there are many neighboring lots split to the dimensions that we are requesting. It is our hope that the variance requested will be approved.”

Jerome R. Schmeiser, Planning Consultant, stated the sewers that were referenced in his findings have been installed and that they are operational and therefore would recommend the variance be granted. Several other parcels have already been split and created such as the one being requested,

Julio Ruvolo, II, petitioner, was in attendance and further explained the need for this request.

Chairman FLORENCE clarified with Jerome R. Schmeiser, Planning Consultant, that only the variance request of Section 10.0704(A)(2)(a) was no longer needed.

Jerome R. Schmeiser, Planning Consultant, stated that variance was no longer needed.

Public Portion: None.

MOTION by SELVA seconded by SLOSSON to close the public hearing.

MOTION carried.

The following resolution was offered by SLOSSON and seconded by SELVA:

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Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied, and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved, that the action of the Board is to grant the requested variance of Section 10.0704(A)(2)(d)-Request to exceed the 3 to 1 ratio by 41.76 feet; Located on the west side of Marseilles Street, approximately 700 feet north of 22 Mile Road, the south ½ of Lot 16 of Volkaert Subdivision; Section 21; Julio Ruvolo II, Petitioner. Permanent Parcel No. 08-21-376-016.

MOTION carried.

8. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section: 10.0347-Request to vary door opening distance from a residential district.
Unit 24 of Regency Commerce Center; Located on East side of Regency Center Drive, 2000' north of 23 Mile Road; Section 17; Walter D'Aloisio, Petitioner. Permanent Parcel No. 08-17-344-024.

Chairman FLORENCE read the findings and recommendations of May 4, 2006. They are follows:

The petitioner is requesting permission to reduce the distance a truck door is planned from a residential district from 600' to 450' (+ or -). The petitioner plans to install sound deadening plastic strips on the door to reduce the sound that may project into the residential area to the east.

RECOMMENDATION:

It is recommended that the variance request be approved since the petitioner has provided a sound deadening device that will protect the adjoining residential neighborhood.

The petitioner submitted a letter dated April 7, 2006, in support of the request, was included into the record.

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“Originally a 12’ x 14’ grade door was located on the east side of the proposed building. This location was problematic due to a proximity within 600 feet of a residential district. Therefore, the proposed 12’ x 14’ grade door has been relocated to the north side of the building. This location is no longer within 600 feet of a residential district.

“Additionally, a truck well has been proposed to be located on the east side of the building, as was demonstrated on the original plan. Like the grade door, the truck well is located within 600 feet of a residential district. However, it appears that it would be problematic, given the site configuration, to re-orientate the truck well and still continue to provide adequate maneuvering space. Therefore, the truck well is to remain as proposed. To help minimize the impact of noise generated from the building to the residential district, we have proposed the utilization of vinyl strip doors. Documentation of the strip doors has been attached.”

Jerome R. Schmeiser, Planning Consultant, asked if he could further review the request being made. He indicated the township had created an ordinance that open doors facing residential areas could not be situated any closer than 600 feet. The reason being that the doors act as a megaphone with all the noise inside the building and would destroy the tranquility of the neighborhood. During the trial of this ordinance amendment we found that it was too much of a constraint on the industrial district. Further research has since been conducted and there is now currently an amendment under way to amend Section 10.0347 which would allow plastic strips in lieu of the 600 feet which is what the proposed amendment consists of.

Member GALLAGHER asked that the petitioner provide documents attached to the site plan showing what type of stripping would be in place.

Public Portion: None.

**MOTION by SLOSSON seconded by SELVA to close the public portion.
MOTION carried.**

**MOTION by GALLAGHER seconded by SLOSSON to table the variance of Section 10.0347-Request to vary door opening distance from a residential district; Unit 24 of Regency Commerce Center; East side of Regency Center Drive, 2000 feet north of 23 Mile Road; Section 17; Walter D’Aloisio, Petitioner. The item has been tabled until the petitioner can furnish the proper documentation on the type of stripping being used and the manufacturing company. The item is tabled until July 11, 2006.
MOTION carried.**

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9. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section 10.0347-Request to vary door opening distance from a residential district.
Unit 25 of Regency Commerce Center; East side of Regency Center Drive, 2000' North of 23 Mile Road; Section 17; Walter D'Aloisio, Petitioner. Permanent Parcel No. 08-17-344-025

Chairman FLORENCE read the findings and recommendation of May 4, 2006. They are as follows:

The petitioner is requesting permission to reduce the distance a truck door is planned from a residential district from 600' to 450' (+ or -). The petitioner plans to install sound deadening plastic strips on the door to reduce the sound that may project into the residential area to the east.

RECOMMENDATION:

It is recommended that the variance request be approved since the petitioner has provided a sound deadening device that will protect the adjoining residential neighborhood.

Chairman FLORENCE indicated this was the same request as item 8 above.

The petitioner submitted a letter dated April 7, 2006, in support of the request, was included into the record.

"Originally a 12' x 14' grade door was located on the east side of the proposed building. This location was problematic due to a proximity within 600 feet of a residential district. Therefore, the proposed 12' x 14' grade door has been relocated to the north side of the building. This location is no longer within 600 feet of a residential district.

"Additionally, a truck well has been proposed to be located on the east side of the building, as was demonstrated on the original plan. Like the grade door, the truck well is located within 600 feet of a residential district. However, it appears that it would be problematic, given the site configuration, to re-orientate the truck well and still continue to provide adequate maneuvering space. Therefore, the truck well is to remain as proposed. To help minimize the impact of noise generated from the building to the residential district, we have proposed the utilization of vinyl strip doors. Documentation of the strip doors has been attached."

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MOTION by GALLAGHER seconded by SLOSSON to table the variance of Section 10.0347-Request to vary door opening distance from a residential district; Unit 25 of Regency Commerce Center; East side of Regency Center Drive, 2000' North of 23 Mile Road; Section 17; Walter D'Aloisio, Petitioner. Permanent Parcel No. 08-17-344-025. The item has been tabled until the petitioner can furnish the proper documentation on the type of stripping being used and the manufacturing company. The item is tabled to July 11, 2006.

MOTION carried.

10. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section 1603(B)(33)-Request to allow fast food restaurant within 300' of residential property.
Section 1605(g)-Request to waiver of 40' setback requirement.
Located on North side of Hall Road, between Deneweth and North Branch;
Section 35; Talon Development Group, Petitioner. Permanent Parcel No. 08-35-476-042.

Chairman FLORENCE read the findings and recommendation of May 4, 2006. They are follows:

The petitioner is requesting variances to allow a restaurant, retail stores, and bank to be located on the above described property. The parcel in question has 568.77' along Hall Road and extends between North Branch and Deneweth Roads with a depth of 212' along North Branch and approximately 350' along Deneweth and contains 4 acres,

The properties abutting the proposed project to the north are zoned and developed for residential purposes.

RECOMMENDATION:

It is recommended that the variance request be denied for the following reasons:

1. Compliance with the strict letter of the setback and distance requirements would not unreasonably prevent the ownership from using the property as zoned. Other commercial structures planned in Macomb Township will be required to comply with the same setback and distance requirements which are evidence that the proper setback and distance requirements would not be unnecessarily burdensome.

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2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in commercial developments in Macomb Township. The other owners are or will be required to comply with the setback and distance requirements. As a result the other property owners do not have the opportunity to make use of a 40' setback and the distance requirements between fast food restaurants and single family properties.

There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the setback and distance requirements from being maintained from the property line. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

3. The variance would amount to reducing the distance and landscape setback by approximately 40% and 100% respectively from the residential areas and the north and east property lines.

The petitioner submitted a letter dated April 12, 2006, in support of the request, was included into the record.

"Applicant's site is located on the north side of Hall Road (M-59), between Deneweth Drive and North Branch drive. Current zoning classification for the site is General Commercial ("C-2"). Applicant's parcel fronts on Hall Road. Property to the north and east of Applicant's parcel is zoned residential ("R-1"), and is utilized as R-1. Property to the west is zoned Local Commercial ("C-1"). Applicant's request is relative to setback requirements within C-2 Districts.

"Applicant seeks to develop a commercial/retail center comprised of a restaurant, multi-tenant retail building, and a bank on the subject parcel. A restaurant is a proper use in a C-2 district, pursuant to Section 10.1603(B)33, as stated below. Applicant's Variance Requests are relative to: 1) Section 10.1603(B)33, which requires a setback of three hundred feet (300') separating a fast food restaurant of similar use from residential property; and 2) Section 10.1605(G), which requires a greenbelt setback of forty feet (40') separating a Section 10.1603 permitted use or special land use from any residential use. The Applicant's site cannot be developed in strict compliance with Ordinance Sections 10.1603(B)33 and 10.1605(G), as stated above. Applicant therefore seeks a Variance from the requirements of the three hundred (300) foot setback and the forty (40) foot greenbelt setback.

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"Introduction.

"In the C-2 District, the Ordinance, at Section 10.1603(B)33, sets forth the 300-foot setback requirement as follows:

Section 10.1603. Special Land uses permitted.

Buildings and structures and parts thereof may be erected, altered or used and land may be used for one or more of the following purposes subject to the approval of the Macomb Township Planning Commission and subject to the Special Land Use permit procedures at Section 10.2401 of this Ordinance.

B. Business and commercial activities similar to and including the following:

33. Fast food restaurants, subject to the following conditions:

- a. No fast-food restaurant, either principle or accessory to a principle, shall be located within three hundred (300) feet of any residentially zoned property unless the fast-food restaurant is separated from the residentially zoned property by a street or public thoroughfare of not less than one hundred twenty (12) feet of right-of-way.
- b. Drive-through service shall be permitted only if the fast-food restaurant is located in a freestanding building and a satisfactory traffic pattern for the drive-through lane can be established to prevent traffic congestion and the impairment of vehicular circulation for the remainder of the development. Vehicle stacking lanes shall not cross any maneuvering lanes, drives or sidewalks,

"Section 10.1605(G) of the Ordinance sets forth the 40-foot greenbelt/setback requirements as follows:

Section 10.1605. Site limitations.

G. *Screening requirement.* Any parcel to be developed with a structure(s) for a permitted use or special land use pursuant to

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Section 10.1602 or Section 10.1603 of this Ordinance shall provide a six (6) foot high decorative masonry wall and a **forty (40) foot setback area separating** any structure or the parking of private passenger vehicles or any access drive, service drive, loading area or maneuvering land from any parcel zoned AG, R-1-S, R-1, R-1-E, R-2-L, R-2, R-2-H, R-3, CF or MTC or any residential use. Further, the forty (40) foot setback area must be developed as a greenbelt approved by the Planning Commission. If a common area developed pursuant to Section 17-140 of the Township Land Division Regulations exists abutting the required screening referenced above the required screening setback may be reduced to twenty (20) feet. The six-foot high decorative masonry wall shall be required regardless of the existence of an adjoining developed common area.

“Applicant’s property dimensions are approximately as follows: frontage of M-59 is approximately 568.74 feet; the parcel is not square, and depth of the east side of the parcel along North Branch Drive is approximately 212.35 feet, with a leg of approximately 85.60 feet, while the west edge of the parcel is approximately 352.36 feet along Deneweth Drive.

“Because of the size and shape of the parcel, requiring strict compliance with Sections 10.1603(B)33 and 10.1605(G) effectively deprives Applicant of use of the property as zoned. Variances from the strict application of Ordinance Sections 10.1603(B)33 and 10.1605(G) are appropriate in this circumstance.

“Law and Application.

“Variances which would not change the use of the land, and instead involve setbacks or dimensions, are considered to be non-use or dimensional variances, which concern”...area, height, setback, and the like.” *National Boatland, Inc. v Farmington Hills ZBA*, 146 Mich App 380, 387; 380 NW2d (1985). The applicable standard for the granting of dimensional variances is “practical difficulty.” *Id.* Where a property owner might otherwise suffer a practical difficulty, a variance is properly granted. *Nat’l Boatland*, 387-388; *Norman Corp v City of East Tawas*, 687 NW2d 861, 867 (2004)

“The Township Zoning Act (“TZA”), MCL 125.271 et seq, is the enabling stature which vests Michigan townships with the authority to regulate land development and use through adoption of zoning ordinances. *Silver Creek Twp v Corso*, 246 Mich App 94; 631 NW2d 346 (2001); MCL 125.271 et seq.

“Further, the TZA gives township boards of appeals the authority to grant

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dimensional variances;

“Where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the zoning ordinance, the board of appeals in passing upon appeals may vary or modify any of its rules or provisions so that the spirit or the ordinance is observed, public safety secured, and substantial justice done. MCL 125.293.

“The criteria applicable to dimensional variances are as follows:

- (a) Whether compliance with the strict letter of the ordinance would prevent the owner from using the property for a permitted purpose or would render conformity with the zoning restrictions unnecessarily burdensome.
- (b) Whether the variance would do substantial justice to the applicant and to other property owners.
- (c) Whether such relief can be granted in a way that the spirit of the ordinance will be observed and substantial justice done. *National Boatland, supra*.

“Explanation of Applicant’s Request.

“Here, the Applicant seeks to use the property as zoned, in a manner consistent with the existing development along M-59. The property is currently zoned C-2, and Applicant wishes to use the property for uses enumerated as proper within a C-2 District. Because of the size, configuration and location of the subject parcel, Applicant faces practical difficulties in developing the parcel.

“The Intent of the C-2, General Commercial District, is set forth in the Macomb Township Zoning Ordinance, in pertinent part, as follows:

“The purpose of the District is to provide for the development of a range of commercial activities providing goods and services required by the total community. It is intended that these districts be located on major paved thoroughfares, accessible to as many portions of the community as possible, and on sites of sufficient size to allow for adequate off-street parking and loading facilities and community control of vehicular access to frontage roads. *Macomb Township Zoning Ordinance, Section 10.1601*.

“Applicant wishes to utilize the parcel to provide commercial activities, and the parcel is located on a major paved thoroughfare. However, as applied to Applicant’s parcel, the requirements of Macomb Township Zoning Ordinance Sections 10.1603(B)33 and 10.1605(G) create a hardship/practical difficulty for

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this Applicant. Strict enforcement of these requirements would effectively deprive the Applicant of use of the parcel as zoned. The grant of Variances from these Sections is appropriate; practical difficulties exist and the above criteria apply. Therefore, Applicant's request is based upon the following:

- 1. Strict Compliance with Ordinance Sections 10.1603(B)33 and 10.1605(G) is unreasonably burdensome, and creates a practical difficulty.**

"Applicant faces a practical difficulty/unnecessary hardship due to the size and shape of the parcel, and the site's location on M-59. on the state's major thoroughfares.

"Prior to the widening of M-59, the subject parcel was much deeper. As a result of the widening of M-59, the Residential District abutting Applicant's parcel was brought closer to the road.

"Here, Applicant's property is only 352.63 feet deep at its deepest point. The parcel is only 212.36 feet deep at the east edge. The requirement of a 300 setback creates a parcel that cannot contain a fast food restaurant with a drive-thru, as have been developed on other sites along M-59. The requirement of a 40-foot greenbelt setback is likewise burdensome to the extent that the parcel cannot be utilized as zoned.

- 2. Conditions and Circumstances are unique to this site: the parcel is to be used as zoned, and property along M-59 is intended for commercial use, yet Applicant will be deprived of use of the property if strict compliance with Sections 10.1603(B) and 10.1605(G) are requested.**

"Applicant's parcel, with a depth of only 352.63 feet at its deepest point, creates a practical difficulty in strict compliance with requirements of Ordinance Sections 10.1603(B)33 and 10.1605(G). Applicant has incorporated into its plan the six (6) foot masonry wall as set forth in Section 10.1605(G), and will have landscaped areas. Applicant has used great care in drafting the site plan, including the construction, placement and appearance of the site, and giving consideration to the aesthetic nature of the surrounding properties. The site is planned for use as zoned, however, because of the size, configuration and location of this property, requiring strict compliance with the cited Ordinance Sections is unreasonable and will deprive Applicant of full use of the site. Variances in this instance will allow Applicant to utilize the site, without any detriment to others.

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3. Conditions existing on Applicant's site were not created by the Applicant, nor by the owner or the predecessor in title.

"The location of the parcel on M-59 limits the Applicant in its configuration of buildings on the parcel. The conditions were created not by the Applicant or any predecessor, but rather by the widening of M-59.

"The configuration of the property will not allow for the strict application of the Ordinance Sections. The size and shape of the parcel preclude the Applicant from strictly complying with the current setback requirements while still making use of the parcel as zoned. Leaving a 300-foot separation between the buildings and the property line leaves the Applicant with only a few feet of property remaining. Even the 40-foot will preclude use by the Applicant, as other requirements can then not be met. Expansion of the highway has resulted in reduced parcel depth, creating a practical difficulty in development. The requested Variances will allow Applicant to utilize the site as zoned.

4. A grant of Variance will not confer special privileges to this Applicant, as other sites within this zoning district do not abut residential property.

"A grant of Applicant's Variance Requests will not bestow upon the Applicant any special privilege. Many other sites within this district are not similarly situated, in that they do not share the same configuration, and do not abut residential property. Conversely, any sites that may be similarly situated, have, upon information and belief, been allowed placement within 300 feet of a Residential District. Granting Applicant's Variance Requests will not confer a special privilege, but will instead do substantial justice and will uphold the spirit of the Ordinance. The portion of the C-2 District wherein the subject property lies is only approximately 300 feet deep, as compared to other commercial areas which have 1,200 feet of depth. Upon information and belief, the Township has permitted other fast food restaurants to be placed on Hall Road and within 300 feet of a Residential District. The Township's stated Intent of the C-2 District is "to provide for the development of a range of commercial activities providing goods and services required by the total community." Macomb Township Zoning Ordinance, Section 10.1601. Further, "it is intended that these districts be located on major paved thoroughfares, accessible to as many portions of the community as possible..." The requested variance will not be contrary to the spirit and intent of the Township Ordinance. Conversely, strict enforcement of the current ordinance would cause a practical difficulty and deprive Applicant of rights currently enjoyed by other property owners.

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"Under the circumstances, strict compliance with the current ordinance will cause practical difficulty and undue hardship, and will deprive the Applicant of use of the property. Such deprivation would deprive Applicant of rights currently enjoyed by other property owners in the area.

"We appreciate your consideration in this matter."

Bob Kirk, representative, was in attendance and stated a portion of the property in question was taken with the expansion of M-59. There are several parcels along Hall Road which are not very deep. The depth on the west side of the property is only 350 feet, where we would be unable to meet the minimum setback. In addition, there was a similar case with Wendy's/Tim Horton's which only had an 86 foot setback. They went to the Zoning Board of Appeals, where they were denied and was eventually resolved by a Consent Judgment. (see attached correspondence of February 17, 1999 to Clerk Norman Snay from Community Planning Consultants) The uniqueness is with the configuration of the property which was caused by the widening of Hall Road not by any action taken by the petitioner. In addition, the practical difficulty exists in that the ordinance does not allow us to develop the property with these permitted uses. A proposed site plan was presented showing the requested variances.

Member GALLAGHER asked when the property acquisition took place.

A representative stated they are currently in the process of acquiring the property.

Member GALLAGHER stated in essence you are trying to put something on the property that does not fit. He suggested that they find a piece of property that would fit what they are proposing. If the use doesn't fit the property, why are you coming here to seek a variance. What you are asking for is to break the law and what is a good reason for you to break the law of this township. There is none. You are trying to put too much on too small of a parcel. The ordinance is clear; so that when you buy a piece of property, you make sure that you have the depth to support the proposed development.

Public Portion:

Vito Meatte, 45440 North Branch, read a letter which was received May 9, 2006 (see file) and a summary of the letter is as follows: "The residents living on North Branch and Deneweth which are dead-end roads are now receiving additional traffic which is causing a need for repairs that they residents must incur. Along with the additional traffic there is an increased risk to children as there are no sidewalks for our kids to ride bikes on or to walk on.

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"Since the Wendy's/Tim Horton's has been built our neighborhood has seen negative effects such as noise level from orders being taken, the glow of lights and littering.

"The most important issue is that of the bus stop that L'Anse Creuse uses to pick up school aged children ranging from kindergarten thru high school. The drivers of the buses do not use the warning signals since there is such a high volume of traffic on Hall Road they are afraid of causing a traffic accident.

"Lastly, the zoning requirements were created for the protection and the well-being of the neighborhood and community. We ask that this variance be denied to protect everyone involved."

A signed petition was also received from concerned residents against the variances being sought and will become part of the record.

Kevin Bower, 45452 North Branch, stated that the widening of Hall Road has not put a burden on the people trying to develop the property for which variances are being sought.

Tim Frank, 45209 North Branch, stated they are the first house on the street and if the proposed development were to occur it would depreciate the value of this property. I am asking that this variance be denied. It is inappropriate to have a development like this occur if its not in the grand plan of the Township.

John Sisk, 45184 North Branch, used Dairy Queen as an example with the widening of Hall Road. He also noted that there are two sides to a concrete wall. If the proposed development were to occur there would be no scenic value left and my property would lose its value.

Julie Yager, 45315 Deneweth, stated that when the representative was showing the proposed site plan that we note the word possible. The property in question, is already littered upon, and hopes that this request will be denied.

James Nichols, 45354 Deneweth, stated that Deneweth is a private Road and that they had to maintain it. We are currently trying to figure out how to fix the potholes that are currently out there. Lastly, he stated he was against the request.

Jacob Hebert, 45373 Deneweth, stated that he has scenery ripped out to build the Wendy's/Tim Horton's. He then questioned if another fast food restaurant was needed in a residential area. Lastly, he highlighted the volume of speed traffic that already exists on Hall Road.

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MOTION by SLOSSON seconded by SELVA to close the public portion.

MOTION carried.

MOTION by GALLLAGHER seconded by SELVA to deny the variance request of Section 10.1603(B)(33)-Request to allow a fast food restaurant within 300 feet of a residential property; Located on the north side of Hall Road, between Deneweth and North Branch; Section 35; Talon Development, Petitioner. Permanent Parcel No. 08-35-476-042. The variance was denied based upon the recommendations as follows and that there is no practical difficulty:

- 1. Compliance with the strict letter of the setback and distance requirements would not unreasonably prevent the ownership from using the property as zoned. Other commercial structures planned in Macomb Township will be required to comply with the same setback and distance requirements which are evidence that the proper setback and distance requirements would not be unnecessarily burdensome.**
- 2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in commercial developments in Macomb Township. The other owners are or will be required to comply with the setback and distance requirements. As a result the other property owners do not have the opportunity to make use of a 40' setback and the distance requirements between fast food restaurants and single family properties.**

There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the setback and distance requirements from being maintained from the property line. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

- 3. The variance would amount to reducing the distance and landscape setback by approximately 40% and 100% respectively from the residential areas and the north and east property lines.**

Member PROVENZANO stated to deny based upon the recommendation and that they are trying to put too much in a small spot.

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Member GALLAGHER added that the 300 foot setback was put in the ordinance after due consideration. There has to be some consideration given to the residents who live in the area. Even though you have a matter of right in that zoning district, you still have limitations that need to be maintained.

Member SELVA denied based on lack of practical difficulty that denying the variance does not disallow the development of the property for commercial development as zoned.

Member SLOSSON also denied based on the fact that the distance requirements and setbacks would not prevent the ownership from using the property as zoned.

Chairman FLORENCE stated he was opposed to the variance for the reasons listed above by the other Zoning Boards of Appeals members. There are alternatives available to build on this property.

MOTION carried.

MOTION by FLORENCE seconded by GALLAGHER to deny the variance of Section 10.1605(g)-Request to waiver the 40 foot setback requirement; Located on the north side of Hall Road, between Deneweth and North Branch; Section 35; Talon Development, Petitioner. Permanent Parcel No. 08-35-476-042. The variance was denied based upon the recommendations as follows and that there is no practical difficulty:

1. Compliance with the strict letter of the setback and distance requirements would not unreasonably prevent the ownership from using the property as zoned. Other commercial structures planned in Macomb Township will be required to comply with the same setback and distance requirements which are evidence that the proper setback and distance requirements would not be unnecessarily burdensome.
2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in commercial developments in Macomb Township. The other owners are or will be required to comply with the setback and distance requirements. As a result the other property owners do not have the opportunity to make use of a 40' setback and the distance requirements between fast food restaurants and single family properties.

There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the setback and distance requirements

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from being maintained from the property line. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

3. The variance would amount to reducing the distance and landscape setback by approximately 40% and 100% respectively from the residential areas and the north and east property lines.

Member PROVENZANO stated to deny based upon the recommendation and that they are trying to put too much in a small spot.

Member GALLAGHER added that the 300 foot setback was put in the ordinance after due consideration. There has to be some consideration given to the residents who live in the area. Even though you have a matter of right in that zoning district, you still have limitations that need to be maintained.

Member SELVA denied based on lack of practical difficulty that denying the variance does not disallow the development of the property for commercial development as zoned.

Member SLOSSON also denied based on the fact that the distance requirements and setbacks would not prevent the ownership from using the property as zoned.

Chairman FLORENCE stated he was opposed to the variance for the reasons listed above by the other Zoning Boards of Appeals members. There are alternatives available to build on this property.

MOTION carried.

11. VARIANCE FROM THE PROVISION OF THE Fence Ordinance;
Section 14-26(B)-Request to vary the height of a fence from 6' to 8'.
Located on Northwest corner of Hall and Garfield Roads; Section 32; Detroit Edison, Petitioner. Permanent Parcel No. 08-32-300-018.

Chairman FLORENCE read the findings and recommendation of May 4, 2006. They are as follows:

DTE is planning to construct a temporary substation on the above described property. The substation will be constructed on a parcel of property containing approximately 4.4 acres. The location of the structure will be situated 200' north of Hall Road and 300' from Garfield. A setback distance of 100' will be provided from the west property line.

The nearest residential development is approximately 500' north and west of the facility location.

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The petitioner advises that the National Electric Safety Code requires that such a substation facility be fenced with an 8' fence or a 6' fence with barbed wire extended above the 6'.

RECOMMENDATION:

It is recommended that the variance request be approved since the extended fence height will comply with the Electric Code and provide safety for the area.

Mick Blunden, representative, was in attendance.

Public Portion: None.

**MOTION by SLOSSON seconded by SELVA to close the public portion.
MOTION carried.**

The following resolution was offered by SLOSSON and seconded by SELVA:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied, and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved, that the action of the Board is to grant the requested variance of Section 14-26(B)-Request to vary the height of fence from 6 feet to 8 feet; Located on the northwest corner of Hall Road and Garfield Road; Section 32; Detroit Edison, Petitioner. Permanent Parcel 08-32-300-018.

MOTION carried.

12. **VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;**
Section 10.0323A10(X)-Request to allow offstreet parking on the contiguous Home Depot site.
Section 10.1603(B)(29)-Request to allow the combination of contiguous parcels to form the basis for a "shopping center".
Section 10.1706(A)-Request to allow the center to be under one operating and management agreement with Home Depot and above parcels 08-34-300-027 and 08-34-300-028.
Located on North side of Hall Road, approx. 680' east of Heydenreich;
Section 34; Frank Jonna, Petitioner. Permanent Parcel No. 08-34-300-027.

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Chairman FLORENCE read the findings and recommendations of May 4, 2006. They are as follows:

The petitioner is requesting amendments to the ordinance that will provide for:

- a. The combination of parcels for the express purpose of requesting a permit to create a shopping center capturing the parking benefits for all three parcels.
- b. Use of the surplus parking spaces from the Home Depot Development as part of the calculation for the parking for the newly created shopping center.

On November 8, 2005, the Zoning Board of Appeals considered an application by the petitioner to reduce the parking spaces for the proposed Target Store from 845 to 605. That consideration was tabled indefinitely.

Discussion was held at that time regarding the combination of parcels and the use of surplus of parking spaces on the Home Depot site, rather than the granting of variances.

BACKGROUND INFORMATION

According to the Township Assessor, the plan is missing several dimensions along the east and south property lines and the dimensions that are given do not agree with the dimensions for the legal description. This issue must be addressed prior to any action taken by the Board of Appeals.

However, the Planning Consultant is of the opinion that the proper recourse is to have the owner of the property submit a petition along with the owner of the Home Depot to have the Planning Commission consider the entire site as a "shopping center" under the definition of the shopping center in the zoning ordinance.

The property is zoned C-2 which does allow a "shopping center" which is defined as a matter of right in a C-3 zone however, the C-2 zone allows for a special land use permit provision to provide that the property be considered for a shopping center. The disadvantage of such a special land use permit for the property owner is that all conditions of the special land use permit for a "shopping center" in a C-2 zone would be required by the petitioner. These include: walls, setbacks, greenbelts, unified architectural design, group arrangement of buildings, safe and efficient ingress and egress to and from public streets, and no part of any access egress and ingress service drive may be located no closer than 100' from any property line adjacent to a residential district. A major consideration however, is that the parking would be reduced from 1 space per 150 square feet, to 5.5 spaces

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per 1000 square feet.

RECOMMENDATION

It is suggested that the action on this matter be delayed until such time as the necessary legal documents are in order.

The Planning Consultant is of the opinion that the proposal made by the petitioner is valid in that it would provide for a reasonable solution to the issues of parking and property development. However, a number of legal issues must be resolved prior to action of the Zoning Board of Appeals.

These issues include:

- Documents combining the properties for purposes of a shopping center development.
- Additional legal documents conveying the use of the surplus parking from Home Depot to the shopping center development.
- Obtaining a special land use permit in accordance with the provisions of the zoning ordinance for a shopping center area.

That the final legal descriptions and exhibit B documents for the project be reviewed and approved by the Township Attorney and Township Assessor.

The petitioner submitted a letter dated April 20, 2006, in support of the request, was included into the record.

“Section 10.0323(10)(x)” applicant requests a variance to permit off-site parking. Applicants development includes Target Store, a strip center building serving up to six uses and a third building of approximately 5,000 square feet. This development falls twenty seven (27) parking spaces short of the ordinance requirement. This shortage will be made up by amending the “Reciprocal Easement and Operation Agreement” already in place and recorded and approved by Macomb Township.

“Sections 10.1603(B)(29) and 10.1706(A): applicant requests a variance to permit the above two (2) parcels contiguous to be developed as a shopping center containing more than fifty thousand (50,000) square feet of single architectural design and not less than three (3) permitted uses or special land uses with operations owned and managed as one unit by the aforementioned “Reciprocal Easement and Operation Agreement” already in place and recorded and approved by Macomb Township.”

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Jerome R. Schmeiser, Planning Consultant, reviewed the existing development and the future development of the outlots as they relate to the variances being sought. He then noted that Home DePot had requested the return of the site plan bond, which during a field check has found to be many violations.

Member GALLAGHER stated that if one of the proposed outlots were not built upon then there would not be the need to allow the offstreet parking on the contiguous Home DePot site.

Jerome R. Schmeiser, Planning Consultant, stated that as the Home DePot exists he could not recommend the offstreet parking variance.

Frank Jonna, representative, was in attendance and stated if there were any ordinance violations, Home DePot will be made to comply with all Township ordinances. He then discussed the offsite parking is surplus parking that is provided by Home DePot.

A lengthy discussion revolved around the offstreet parking variance and the necessary steps that needed to occur in order for the development of the Target store to receive approval.

Public Portion: None.

MOTION by SLOSSON seconded by SELVA to close the public portion.

MOTION carried.

The following resolution was offered by FLORENCE and seconded by SLOSSON:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied, and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved, that the action of the Board is to grant the requested variance of Section 10.1603(B)(29)-Request to allow the combination of contiguous parcels to form the basis for a “shopping center”; Located on the north side of Hall Road, approximately 680 feet east of Heydenreich Road; Section 34; Frank Jonna, Petitioner. Permanent

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Parcel No. 08-34-300-027. The variance would be conditioned upon any comments/recommendations referenced by the Planner, Spalding DeDecker, Assessor, Township Attorney, Road Commission of Macomb County, Building and the Drain Office must be addressed and acted upon.

Member SELVA stated she would be opposed.

MOTION by FLORENCE to withdraw the previous motion of approval for Section 10.1603(B)(29).

MOTION by GALLAGHER seconded by SELVA to table the variance request of Section 10.0323(A)(10)(X), Section 10.1603(B)(29) and Section 10.1706(A); Located on the north side of Hall Road, approximately 680 feet east of Heydnereich Road; Section 34; Frank Jonna, Petitioner. Permanent Parcel No. 08-34-300-027. The variance was tabled to allow for specific details to be gathered on how the Target site plan will be resolved in connection with Home DePot.

Tom Bonneville stated there was a Real-Estate Agreement in place and on file with the Macomb County Register of Deeds.

MOTION carried.

13. OLD BUSINESS

None.

14. NEW BUSINESS

None.

15. PLANNING CONSULTANTS COMMENTS

None.

16. MOTION TO RECEIVE AND FILE ALL CORRESPONDENCE IN CONNECTION WITH THIS AGENDA.

MOTION by GALLAGHER seconded by SLOSSON to receive and file all correspondence.

MOTION carried.

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ADJOURNMENT

MOTION by SLOSSON seconded by SELVA to adjourn the meeting at 9:24 P.M.

MOTION carried.

Respectfully submitted,

Brian Florence, Chairman

Dawn Slosson, Secretary

Beckie Kavanagh, Recording Secretary

BK